

The State Bar of California  
FY 2009 Rules Revision Commission Work Plan

<b>BACKGROUND</b>
<b>Sub-entity Name: Commission for the Revision of the Rules of Professional Conduct</b>
<b>Chair: Harry B. Sondheim</b>
<b>State Bar Staff: Randall Difuntorum, Director, Competence Programs</b>
<b>Date: January 18, 2008</b>
<p><b>Sub-entity Background:</b></p> <p>The Commission for the Revision of the Rules of Professional Conduct is composed of 14 persons, including the chair, two co-vice-chairs, and a non-lawyer public member. The original Commission was established by the State Bar in 1985, following the American Bar Association's (ABA) issuance of the then new ABA Model Rules of Professional Conduct. The original Commission studied the ABA Model Rules and developed proposed amendments to California's rules which were adopted by the Board and then made operative by the Supreme Court in 1989 and in 1992. After its work was completed, the Commission was placed in an abeyance status by the Board. In 2001, then State Bar President Palmer Madden in consultation with the then President-elect Karen Nobumoto and the members of the 2001 Board of Governors, re-activated the Commission, replacing some original members who were unavailable to serve and adding a few members. As was the case with the original Commission, it is anticipated the work of the new Commission will be a limited multi-year project.</p> <p>The charge of the Commission is as follows:</p> <p>The Commission for the Revision of the Rules of Professional Conduct ("Commission") is to evaluate the existing California Rules of Professional Conduct ("California Rules") in their entirety considering developments in the attorney professional responsibility field since the last comprehensive revision of the California Rules occurred in 1989 and 1992. In this regard, the Commission is to consider, along with judicial and statutory developments, the Final Report and Recommendations of the American Bar Association's ("ABA") Ethics 2000 Commission, the American Law Institute's <i>Restatement of the Law Third, The Law Governing Lawyers</i> ("Restatement"), as well as other authorities relevant to the development of professional responsibility standards. The Commission is specifically charged to also consider the work that has occurred at the local, state and national level with respect to Multi-Disciplinary Practice ("MDP"), Multi-Jurisdictional Practice ("MJP"), unauthorized practice of law ("UPL"), court facilitated <i>propria persona</i> assistance, discrete task representation and to other subjects that have a substantial impact upon the development of professional responsibility standards.</p> <p>The Commission is to develop proposed amendments to the California Rules that:</p> <ol style="list-style-type: none"><li>1. Assure adequate protection to the public in light of developments that have occurred since the rules were last reviewed and amended in 1989 and 1992;</li><li>2. Promote confidence in the legal profession and the administration of justice;</li><li>3. Facilitate compliance with and enforcement of the rules by eliminating ambiguities and uncertainties in the rules; and</li><li>4. Eliminate and avoid unnecessary differences between California, and other states, fostering the evolution of a national standard with respect to professional responsibility issues.</li></ol>

The State Bar of California  
 FY 2009 Rules Revision Commission Work Plan

<b>Proposed Activities</b>	
<b><u>Activity 1</u></b>	<b><u>Status/Time Frame:</u></b>
<p><b>Meetings</b></p> <p>To continue the comprehensive study set forth in the Commission's charge, eleven day-long meetings are planned for FY 2009. At these meetings, the Commission will conduct the deliberative process component of its study and will develop and revise rule amendment proposals, including addition of new rules and deletion of existing rules. Between meetings, the Commission's members, its staff, and its consultant will perform legal research, information gathering, and other analytical activities to support the rule study process.</p> <p>Depending on the extent of redrafting that will be done following consideration of public comments and testimony and also redrafting implemented in response to informal input from the Supreme Court, the Legislature or the Governor, the Commission anticipates possible submission of its final report and recommendation to the Board Committee and the Board of Governors.</p>	<p>The schedule of meetings has not yet been set. Ordinarily, the meetings are scheduled about 6 weeks apart with the location alternating between northern and southern California sites. It is anticipated that 4-6 individual rules will be considered at each of these meetings. It is also anticipated that consideration of rules will include consideration of draft rules returning from public comment.</p> <p>Commission staff will provide periodic reports to the Board's Committee on Regulation, Admissions and Discipline Oversight. The Commission will work closely with the Board Committee in strategically managing the public comment process on draft rules.</p> <p>As appropriate, members of the Commission will present reports to the Board regarding the status of the Commission's work product.</p> <p>If in FY 2009 redrafting after public comment is completed, the Commission would present its final report and recommendation to the Board Committee and the Board of Governors.</p>

<b>Performance Indicators for Activity 1</b>
<p>The Commission plans to hold 11 day-long meetings, addressing approximately 4-6 individual rules at each of the meetings.</p>

The State Bar of California  
FY 2009 Rules Revision Commission Work Plan

**How Activity 1 Addresses State Bar Strategic Plan**

Goal 1: The public is protected and served by attorneys and other legal service providers that meet the highest standards of competency and ethics.

**Strategy 1.4 Competence and Ethical Standards.** Ensure the highest levels of competency and ethics of all attorneys and others regulated by the State Bar.

*The Commission's task of studying and drafting proposed amendments to the Rules of Professional Conduct enhances the State Bar's public protection function by fostering member compliance with updated disciplinary standards that accounts for new and recent developments in the field of professional responsibility in California and at a national level.*

**Strategy 1.6 Paraprofessionals and the Unauthorized Practice of Law.** Address ways in which non-attorney legal services providers should be monitored or regulated to ensure non-lawyer practitioners are in compliance with relevant statutes and unscrupulous and unlawful non-lawyer practitioners do not harm consumers.

*Included in the Commission's charge is the assignment to consider relevant developments in the specific area of the unauthorized practice of law.*

**Strategy 1.7 Multi-jurisdictional Practice.** Keep California attorneys at a competitive advantage with attorneys from other jurisdictions while recognizing the changing multi-jurisdictional environment in which attorneys and their clients operate today.

*Included in the Commission's charge is the assignment to consider relevant developments in the specific area of multi-jurisdictional practice.*

Goal 5: The State Bar is recognized and respected as a contributing and accountable leader in improving the administration of justice and ensuring the rule of law in our civil society.

*The Commission's work contributes to enhanced member and public confidence in the organized bar by reflecting an appropriate emphasis on the importance of maintaining the best possible standards of attorney professional responsibility.*

**How Activity 1 Addresses Sub-entity Charge**

This activity fulfills the requirement that the Commission evaluate the existing rules in their entirety, with the goal of developing comprehensive proposed amendments.

**Proposed Activity 1 Budget**

The proposed budget to carry out the Commission's overall operation is found on page 7. Of the entire \$87,800 requested, approximately \$80,100 is attributable to the cost to carry out proposed Activity 1. This proposed Activity 1 expense includes Commission member and staff travel for 10 meeting days, and related expenses for copying and postage for assignments and agenda materials, as well as the associated Commission Consultant research and drafting support for these meetings.

The State Bar of California  
FY 2009 Rules Revision Commission Work Plan

<b>Proposed Activities</b>	
<b><u>Activity 2</u></b>	<b><u>Status/Time Frame:</u></b>
<p><b>Public Access and Outreach</b></p> <p>Much information related to the Commission, including a roster of members, a schedule of meetings, agendas, action summaries, and draft rules, is posted at the Commission's area on the State Bar website. All of the Commission's meetings are held in open session, although the Commission will, at times during those meetings, enter closed session to address administrative matters and other appropriate closed session matters. Interested persons are welcomed to attend and several groups have designated liaison's who closely monitor the Commission's work.</p> <p>Communication with liaisons and interested persons will continue through the State Bar's "E-list" group e-mail distribution system.</p> <p>In FY 2009, the Commission anticipates that it will seek Board Committee authorization for two public comment distributions: (1) distribution of group no. 4 of the Commission's draft rules (group no. 1 one was distributed in 2006; group no. 2 was distributed in 2007; and group no. 3 is anticipated for 2008); and (2) a subsequent distribution of the entirety of the Commission's draft rules to allow commentators to assess the totality of the proposed rules as many rules are regarded as interdependent (this public comment distribution would follow redrafting by the Commission in response to the four initial public comment distributions by groups).</p> <p>The Commission also anticipates requesting Board Committee authorization to conduct a public hearing for the group no. 4 public comment drafts and a public hearing for the distribution of the entirety of the Commission's draft rules.</p>	<p>Staff anticipates maintaining public access to the Commission's material available: 1) at the State Bar's website; 2) through the State Bar's "E-list" group e-mail distribution system.</p> <p>It is anticipated that liaisons who have been designated by various groups (i.e., the Los Angeles County Bar Association, Bar Association of San Francisco, the Committee on Professional Responsibility and Conduct, and the California Commission on Access to Justice) may invite representatives of the Commission to address them concerning rule revision issues of mutual interest.</p> <p>It is also anticipated that the Commission will continue to invite representatives of local or specialty bars to address the Commission concerning rule revision issues of mutual interest.</p> <p>If in FY 2009 redrafting after public comment is completed, the Commission would present its final report and recommendation to the Board Committee and the Board of Governors. Stakeholders and other interested persons would have the opportunity to attend the open session Board Committee and Board of Governors meetings at which the Commission's final report and recommendation is considered. If this occurs, then it would likely be in the 4<sup>th</sup> quarter of FY 2009.</p>

The State Bar of California  
FY 2009 Rules Revision Commission Work Plan

**Performance Indicators for Activity 2**

Commission staff will provide periodic reports to the Board's Regulation, Admissions and Discipline Oversight Committee. The reports will provide information concerning the attendance and participation of liaisons and stakeholders at Commission meetings, outreach programs and presentations by Commission members, and informal written comments to the Commission.

**How Activity 2 Addresses State Bar Strategic Plan**

This activity implements a process which, at a minimum, complies with the State Bar's open-closed meeting policies, and goes beyond minimum requirements in order to assure a thorough rule study that garners member and public confidence.

**How Activity 2 Addresses Sub-entity Charge**

Goal 2: The State Bar provides a wide array of services and benefits to members that meet their professional development, business, and personal needs.

**Strategy 2.2 Professional Development Services.** Seek ways to improve and inform members about professional development opportunities and services, including continuing legal education (MCLE), the Ethics Hotline, Alternative Dispute Resolution, Fee Arbitration and Lawyer Assistance programs.

*The public access to the Commission's meetings and work product, together with the Commission's proactive outreach activity has an educational effect by facilitating a high-level discussion of new and recent issues in professional responsibility. The Commission will seek ways to update members as to changes that are proposed and adopted by the Supreme Court.*

**Strategy 2.3 Communication with Members.** Use technology to improve the quality and quantity of methods for receiving information from and providing information to members and member groups.

*The regular posting of materials relating to the Commission's activities on the State Bar's web-site, as well as the ability of members to provide comments and proposed revisions by e-mail, notice to interested persons provided through the State Bar's "E-list" group e-mail distribution system, are uses of technology that improve communication between the Commission and the Bar's members.*

The State Bar of California  
FY 2009 Rules Revision Commission Work Plan

Goal 4: The State Bar fulfills its mission through effective and supportive relationships with all stakeholders.

**Strategy 4.2 Court/Bar Collaboration.** Actively encourage and support member participation in bench-bar efforts to improve the administration of justice and access to the legal system for low and moderate income Californians.

*State Bar Senior Executive staff including Governmental Affairs staff, directly coordinates the work of the Commission with Supreme Court staff and representatives of the Legislature and the Governor.*

*The Access to Justice Commission has appointed a liaison who regularly attends meetings and assists the Commission in monitoring access issues.*

**Strategy 4.3 Public Information.** Actively inform the public, members, and all key stakeholders about the effective operation and activities of the State Bar through the use of technology written materials and in-person communication, and seek input from stakeholders about the operation and activities of the Bar.

*We continue to provide public access to the Commission's meetings and work product through the use of the State Bar's video conference technology and the posting of Commission meeting materials on the State Bar's website, with notice to interested persons provided through the State Bar's "E-list" group e-mail distribution system.*

**Proposed Activity 2 Budget**

The proposed budget to carry out the Commission's overall operation is found on page 7. Of the entire \$87,800 requested, approximately \$7,700 is attributable to the cost to carry out proposed Activity 2. The proposed Activity 2 expenses include the cost of holding 2 public hearings, and producing hard copy and electronic copy public comment packages for 2 public comment circulations.

**Recommended New Strategic Initiatives For Board Consideration**

**Name of Initiative:** [Note: At this time, there are no new initiatives contemplated for 2009.]

**Purpose:**

**Responsible Entity:**

**Connection to Strategic Plan:**

**Desired Outcome(s):**

**Fiscal and Staff Implications:**

**Proposed Performance Measures:**

Are activities within legislative and judicial restrictions imposed on the State Bar (Keller, Hudson, Brosterhous, etc.)?

Yes [ X ] No [ ] If no, please explain.

The State Bar of California  
FY 2009 Rules Revision Commission Work Plan

<b>PROPOSED BUDGET</b> <i>(Combined Proposed Activity Budgets plus Staff Costs)</i>				
Items	2007 Budget	2007 Outlook	2008 Budget	2009 Proposed
<b>Estimated Staff Time Required</b>				
<b>FTE:</b>				
Director	.35	.35	.35	.50
Attorney	.00	.00	.00	.00
Sr. Admn. Spec.	.10	.10	.10	.20
Sr. Admn. Asst.	.20	.20	.20	.20
Admn. Sec.	.15	.15	.15	.25
Paralegal	.05	.05	.05	.15
TSAT	.15	.15	.15	.15
	TOTAL: 1 FTE	TOTAL: 1 FTE	TOTAL: 1 FTE	TOTAL: 1.45 FTE
<b>Travel Staff</b>	1,980	781*	1,900	2,500
<b>Travel Volunteer</b>	26,420	17,231	25,000	22,500
<b>Meeting Room Rental/Security Guard/Janitorial Services/HVAC</b>	2,650	1,594	2,600	2,000
<b>Catering</b>	6,950	9,303	6,500	9,000
<b>Postage</b>	2,800	551**	2,800	2,000
<b>Telephone</b>	600	808	500	800
<b>Copier Allocation</b>	6,500	4,402	5,000	5,500
<b>Commission Consultant Professional Services</b>	40,000	40,000	40,000	40,000
<b>Other – Stationary Supplies/Delivery Services/Outside Services (Court Reporter)/Seminars (ABA Meeting Reg. Fee)</b>	3,200	1,515***	3,622	3,500
<b>TOTAL Operating Expense</b>	91,100	76,185	87,922	87,800

\*In 2007, approximately \$500 in travel expenses was inadvertently charged to a non-Commission business unit. In addition, it is anticipated that more frequent lodging expenses will be incurred due to the limited flights offered by the Bar's contracted carriers. It is also anticipated that an additional staff person may be needed in 2009 to assist in the staffing of the Commission in its preparation of its final report and recommendation.

\*\* In 2007, the postage expenses were lower than anticipated as only one of two planned public comment circulations was carried out and the report was primarily circulated electronically. However, in 2009 it is anticipated that the postage expenses will be higher to accommodate the public comment circulation of the Commission's final report and recommendation.

\*\*\*In 2007, the court reporting expenses were lower than anticipated as only one of two planned public hearings was conducted. In 2009, these expenses are anticipated to be higher to accommodate two planned public hearings, including an extended hearing on the Commission's final report and recommendation.